IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7687 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

INDIAN ELECTRO CHEMICALS LTD. & 1 - Petitioner(s)

Versus

UNION BANK OF INDIA & 5 - Respondent(s)

==========

Appearance :

MR RS SANJANWALA for Petitioner(s) : 1 - 2.MR TV SHAH for Petitioner(s) : 1 - 2.
None for Respondent(s) : 1,
MS NALINI S LODHA for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 3 - 4.
M/S THAKKAR ASSOC. for Respondent(s) : 5,
MR DN PANDYA for Respondent(s) : 6,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioners, original judgment debtor have prayed for an appropriate writ, direction and/or order quashing and setting aside the order passed by the Recovery Officer, Debts Recovery Tribunal (DRT) dated 29-10-2004 passed below Exh-D/157, orders dated 29-10-2004 and 29-11-2004 passed in Review Petition No.918; common order passed by the DRT dated 25-1-2005 passed in Appeal Nos. 74/04, 78/04 and Misc. Application No.441 of 2004; common judgment and order passed by the Debts Recovery Appellate Tribunal, (Western Region) (DRAT) dated 22-2/3-2005 passed in Appeal No.129 of 2005 and 135 of 2005. It is also further prayed to quash and set aside the award passed by the DRT passed in A.O. No.165 of 1999 and the recovery certificate issued thereon. It is also further prayed for an appropriate order holding that the judgment creditor

respondent No.1 bank is entitle to receive the amount from the petitioner as per the contract of settlement dated 4-7-2001 with interest at the rate of P.L.R. on the reducing balance and to direct the respondent No.4 Recovery Officer, DRT to determine the balance legitimate dues of the bank as per the contract of settlement dated 4-7-2001 after giving set off for the amount received by the respondent No.1 bank against the dues of the petitioner. It is also further prayed to direct to issue new certificate on depositing the balance amount in DRT by the petitioner. It is also further prayed to set aside all the proceedings pertaining to the sale of the land of the petitioner and for an appropriate direction to hand over the vacant and peaceful possession of the land of the factory of the petitioner bearing survey Nos.36 to 42 of Odhav and survey No.74, 75/1, 75/2, 79/1, 79/2 and 80 of village Nikol, Odhav and to set aside any action taken by the respondent No.5 or its nominee, who is claiming to derive any right, title or interest in the above land. It is also further prayed for an appropriate direction to hand over the vacant and peaceful possession of the land of the factory of the petitioner to the petitioner.

2. The facts leading to the present Special Civil Application are as under:

The respondent No.1 Union Bank of India (hereinafter referred to as “the certificate holder”) filed Original Application No.165 of 1999 for recovery of the dues under section 19(1) of the Recovery of Dues Due to Banks and Financial Insitutions Act, 1993 (RDBFI Act) against the petitioner M/s Indian Electrochemicals Limited (hereinafter referred to as the “certificate debtor”). It appears that the certificate debtor did not contest the original application; did not file any written statement and the said original application was proceeded further ex parte and came to be decided on 10-9-2001 by the DRT and the certificate debtor was ordered to pay a sum of Rs.4,19,32,380.72paisa to the certificate holder. It was also ordered that the certificate holder shall be entitled to sale the hypothecated and mortgaged properties belonging to the certificate debtor. Accordingly, recovery certificate came to be issued. The certificate holder then filed recovery certificate 918 before the Recovery Officer, DRT, Ahmedabad and hypothecated properties came to be

sold in the recovery proceedings. The properties were purchased by one PBSM and Co. The amount realized was appropriated towards the dues of the certificate holder. Since, the decretal amount was very huge, the certificate holder then requested the recovery officer for selling the mortgaged properties. Public auction has taken place and ultimately the respondent No.5 Bileshwar Industrial Estate Development Pvt. Ltd. (the auction purchaser) was held to be highest bidder and he offered an amount of Rs.4.51 crores. There were claims by the sale tax department as well as Gujarat Kamdar Panchayat (on behalf of the labourers). They submitted their objections which came to be rejected by the recovery officer. It appears that at the time of auction, the certificate debtor raised certain objections with regard to the reserve price etc., which were rejected by the recovery officer and the certificate debtor preferred appeal No.8 of 2003 before the DRT and the DRT by its order dated 23-5-2003 partly allowed the said appeal and the order dated 6-3-2003 of the recovery officer for fixing the reserve price, particularly lot No.I (land) came to be set aside. It appears that certain directions were issued by the DRT with regard to proposal

for settlement and the OTS which will be referred to and dealt with hereinafter. It appears that Special Civil Application No.7106 of 2003 came to be filed by the buyer of the movable properties, before this Court granted the interim stay of the order passed by the DRT in appeal No.8 of 2003. It appears that the certificate debtor submitted an application Exh-D/157 with the recovery officer in recovery proceeding No.918 on 7-10-2004 to review and recall all the orders passed in connection with the sale of the land of the factory of the company and issue No Due Certificate for the dues of the certificate holder alleging inter alia that a settlement has been arrived at between petitioner and the bank on 4-7-2001 informing that dues of the company has settled as per the OTS for Rs.1,42,55,117.72paisa out of which part payment is already made and that company is ready and willing to pay the balance amount. The Recovery Officer by its order dated 23-11-2004 dismissed the application Exh-D/157 and further passed an order that if the certificate debtor want to retain the immovable properties sold on 6-7-2004 and want to settle the matter with the Bank, they are directed to deposit Rs.4.51 crores within a period of 7 days and may approach the bank for a

compromise proposal. It appears that against the order passed by the Recovery Officer dated 6-5-2003, the labour union filed appeal No.26 of 2003 before the Tribunal challenging the rejection of the applications T/24 and T/45. Similarly Sales Tax department preferred appeal No.72 of 2004 before the Tribunal challenging the order dated 5-10-2004 rejecting the application Exh T/82 and T/49. Appeal No.74 of 2004 came to be filed by the certificate debtor challenging the order passed by the Recovery Officer dated 29-11-2004 passed below Exh-D/157. Appeal No.75 of 2004 came to be filed by the certificate holder against the order passed by the Recovery Officer dated 5-10-2004 and 29-11-2004 passed below H/169. Appeal No.78 of 2004 came to be filed by the certificate debtor challenging the order dated 23-11-2004, 29-11-2004 and 1-12-2004 passed by the Recovery Officer. Simultaneously, the certificate debtor also preferred Misc. Application No.441 of 2004 for condonation of delay caused in filing the Civil Misc. Application for setting aside the ex parte judgment in OA No.165 of 1999 decided on 10-9-2001. All the aforesaid appeals and Misc. Application No.441 of 2004 came to be heard and disposed of by the DRT by common judgment

and order dated 25-1-2005. By the aforesaid common judgment and order, the Tribunal allowed the appeal Nos.26 of 2003 and 72 of 2004 i.e. appeal preferred by the Labour Union and Sales Tax department and the orders passed by the Recovery Officer in Recovery Proceedings No.918 which was against the labour union and the Sales Tax Department came to be set aside. The Tribunal dismissed Appeal Nos.74 of 2004, 75 of 2004 and 78 of 2004. The Tribunal also dismissed civil miscellaneous application for setting aside the ex parte judgment and award. It appears that thereafter appeals came to be filed before the DRAT, Mumbai being Appeal Nos.48 of 2005 and 62 of 2005 which also came to be dismissed by the Appellate Tribunal by common judgment and order dated 22-3-2005. Being aggrieved by and dissatisfied with the aforesaid orders, the petitioner certificate debtor has preferred the present Special Civil Application for the aforesaid reliefs.

3. Thus, basically what is challenged in the present Special Civil Application is the order passed by the Recovery Officer passed below Exh-D/157 confirmed by

DRT and further confirmed by the DRAT, Mumbai; the order passed by the DRT in rejecting the application for condonation of delay of 1180 days in preferring Misc. application for setting aside the ex parte judgment and award confirmed by the DRAT, Mumbai. It appears from the pleading and the submission on behalf of the learned advocate appearing on behalf of the petitioners that talks for settlement were going on after the ex parte judgment and award as per the settlement and the OTS. By communication dated 4-7-2001, the senior Branch Manager of the respondent No.1 bank has informed the petitioners with regard to the acceptance of the settlement proposal for Rs.1,42,55,117.72paisa and it is the case on behalf of the petitioners that in spite of the aforesaid communication dated 4-7-2001 and in spite of the fact that an amount of Rs.1,34,67,780/- was already paid in the bank against the dues of the petitioner company and balance amount of Rs.4,77,377.72paisa was due and payable, still the respondent No.1 bank did not act as per the same. It is submitted that by communication dated 4-7-2001, the respondent No.1 bank has accepted one time settlement proposal submitted on

behalf of the petitioners and therefore, it is prayed to grant the relief as prayed for and issue the declaration accordingly. By relying upon certain documents/correspondence annexed with the petition, the learned advocate appearing on behalf of the petitioner has submitted that the respondent No.1 has accepted the OTS settlement submitted by the petitioners for a sum of Rs.1,42,55,177.72paisa. It is also further submitted that as the petitioners were initially not aware of the ex parte judgment and award of the DRT dated 4-7-2001 and that they were subsequently prosecuting other proceedings before the Recovery Officer, they could not prefer the application for setting aside the ex parte judgment and decree and therefore, it is submitted that all the authorities below inclusive of the Tribunal and the Appellate Tribunal have materially erred in not condoning the delay in preferring the application for setting aside the ex parte judgment and decree.

4. Petition is strenuously opposed by the respondent No.1 Bank. At the outset, it is submitted that there are mis-statements made on behalf of the petitioner in the

present Special Civil Application and certain vital documents deliberately not produced on record on behalf of the petitioner and they have tried to mislead the Court by making false statement and not producing the relevant documents. It is submitted on behalf of the respondent No.1 that the present petition is required to be dismissed on the ground of delay and laches, estoppel waiver. It is also further submitted that the present petition has been filed with mala fide intention with a view to further delaying the proceedings and recovery of decretal dues of the respondent No.1 Bank. It is submitted that though ample opportunity was given and the orders were passed by the DRT, the petitioners did not contest the original application; did not file written statement and therefore, the DRT was justified in proceedings further with the O.A. ex parte. It is also further submitted that the certificate Debtor did not even thereafter challenge the ex parte judgment and decree for more than three years, though they have participated in the recovery proceedings and they have aware of the ex parte judgment and decree passed by the Tribunal. So far as the alleged settlement dated 4-7-2001 is concerned, it is submitted on behalf of

the respondent No.1 bank that even as per the communication dated 4-7-2001, the petitioners were required to make the payment as per the conditions mentioned in the said letter dated 4-7-2001 and the petitioners never complied with the conditions prescribed in the communication dated 4-7-2001 and therefore, when the petitioners themselves have not acted as per the communication dated 4-7-2001, they were not entitled to any settlement and therefore, the respondent No.1 bank has rightly initiated the recovery proceedings for the entire decretal amount. It is submitted that some of the documents which are produced in the petition are not correctly produced and in some of the correspondence, though the correspondence by the respondent No.1 bank was “without prejudice”, in the correspondence, word “without prejudice” has not been typed. Thus, the petitioners have tried to mislead the Court. It is submitted that no jurisdictional error has been committed by the Recovery Officer, the DRT and/or the DRAT while passing the impugned orders. It is submitted that the petitioners have tried to exploit the situation and was involved into unnecessary litigation and has tried its best to delay the

recovery proceedings and has misused the proceedings.

5. Shri Mihir Joshi, learned senior advocate appearing for the respondent No.1 bank has pointed out the following mis-statements/suppression etc. made by the petitioners.

(i) The petitioner has incorrectly stated in the Synopsis (page G), petition paragraphs 16(page 13), paragraph 17 (page 14) and paragraph 46 (page 32) that the hearing of the original application took place on 3-8-2001 i.e. before the period of one month for down payment was over, while in fact the hearing had taken place on 30-8-2001. In fact, the original application had been notified for hearing on the regular board of DRT on 30-8-2001.

(ii) The petitioner has incorrectly stated in the Synopsis (page G) that on 25-9-2001, the petitioner was not informed about the ex parte award in the original application by the Bank,similarly on page-H, it has been stated against 29-9-2001 that the payments were accepted unconditionally by the Bank and it never informed the petitioner about the ex parte award and also against 24-10-2001, it has been stated that nowhere was it mentioned that the Bank had already obtained ex-parte

decree. On page J, the petitioner has indirectly stated that it came to know of the ex parte award when notice was served by the Recovery Officer on 7-5-2002. The petitioner has reiterated its contention made before the Tribunals that the petitioner was not aware of the decree dated 10-9-2001 and came to know of the same for the first time when notice was received from the Recovery Officer on 7-5-2002 (paragraph 46, 47 and Ground N; pages 32, 33 and 41).

The petitioner states that the award dated 10-9-2001 cannot be said to be an ex parte award. In fact the original application had been notified for final hearing on the regular board of the DRT on 30-8-2001. Moreover by letter dated 22-9-2001 (page 505) the petitioner had been informed by the Bank regarding passing of the decree, which letter has been acknowledged by the petitioner vide letter dated 28-9-2001 (page 90). Even subsequent correspondence indicates the fact of the passing of the award by the DRT. In letter dated 22-12-2001 (page 517A) addressed by the Bank to the petitioner it was directed that payment of balance amount and installment due in November 2001 with interest failing which OTS proposal

would be null and void and since DRT had already issued a recovery certificate based on the judgment of the presiding officer, the Bank would request DRT to issue a demand notice. This letter has been acknowledged by the petitioner vide letter dated 26-12-2001 (page 519A).

(iii) The petitioner has referred to letter dated 21-10-2001 addressed by the Bank to it in paragraph 20 of the petition (page 15) and has annexed the letter to the petition (at page 92). The existence of the letter has been reaffirmed in the rejoinder at paragraph 19. No letter dated 21-10-2001 is presently available with the Bank. The petitioner has not produced the original letter dated 21-10-2001 received by it. The contents of the said letter have been conveyed by the Bank vide letter dated 24-10-2001 (page 515). However, the words 'without prejudice' have not been incorporated in the typed copy of the letter dated 21-10-2001 annexed to the petition.

(iv) The principal grievance of the petitioner appears to be that a settlement was arrived at between the parties, which was not being adhered to by the Bank and that the Bank continued to proceed further with its original application and recovery proceedings keeping the

petitioner in the dark. However, correspondence which indicates contrary facts has been suppressed by the petitioner being as under:

a. Letter dated 17-7-2001 (page 503) addressed by the petitioner to the Bank not accepting the amount of settlement or even the period within which the payment was to be made.

b. Letter dated 22-9-2001 (page 505) addressed by the Bank to the petitioner conveying that the DRT had passed an order allowing the Bank's claim of Rs.4.19 crores with interest and that unless payment was made, recovery proceedings would be initiated.

c. Letter dated 24-10-2001 (page 515) addressed by the Bank to the petitioner conveying that unless the quarterly installments were paid the benefit of approval of settlement would be lost and the bank would be entitled to recovery full dues with interest.

d. Letter dated 22-12-2001 (page 517A) addressed by the Bank to the petitioner directing payment of balance amount and

installment due in November 2001 with interest failing which OTS proposal would be null and void and since DRT had already issued a recovery certificate based on the judgment of the presiding officer, the Bank would request DRT to issue a demand notice.

e. Letter dated 28-12-2001 (page 520) addressed by the Bank to the petitioner reiterating that the settlement amount was Rs.1.42 crores and not Rs.1.40 crores and in the absence of positive response, the Bank would proceed with legal remedy.

f. Letter dated 29-12-2001 (page 520A) wirrten by the petitioner to the Bank objecting to the amount of settlement and payment schedule.

g. Letter dated 4-1-2002 (page 524A) addressed to the petitioner by the Bank that the proposal for settlement was for payment of Rs.1.42 crores and no change was tenable and that the installment had to be paid on the due dates and under no circumstances could the same be extended.

h. Letter dated 11-4-2003 (referred on page 187) addressed by the petitioner to the Recovery Officer stating inter alia that RBI OTS had expired in September 2002.

(v) The petitioner issued notice in the Gujarat Samachar on 14-7-2005 (page 583) that the subject property was of the ownership and in possession of the petitioner company and therefore, no person should deal with the said property. The petitioner also objected against mutation of entry in respect of the land vide letter dated 19-5-2005 (page 582). This advertisement was issued and objection raised though the sale had taken place on 6-7-2004 as stated by the petitioner itself in the Synopsis and order of confirmation of sale had been passed on 23-3-2005 (page 577) and possession of the subject land had been handed over by the Court Receiver to the purchaser on 23-3-2005(page 581).

It is submitted that when the petitioners have not come out with clean hand and have suppressed the material fact and have made mis-statements as stated hereinabove, the petitioners are not entitled to any discretionary relief in a petition under articles 226 and

227 of the Constitution of India.

6. At the outset, it is required to be noted that earlier this matter was heard by this Court (Coram: K.S. Jhaveri, J.) on 7-10-2005, it was pointed out by the learned advocate appearing on behalf of the respondent No.5 that the petitioners have tried to take due advantage of the present proceedings pending before this Court and advertisement has been issued by the petitioners with incorrect facts and/or without disclosing certain facts. It was pointed out that an advertisement was given in the local newspaper on behalf of the petitioners pertaining to the property with regard to the subject matter of the petition, wherein it was cautioned that the ownership and possession of the subject lands were that of the petitioners and the issue is pending before the Court. However, it was pointed out that there is a decree passed against the petitioners by the competent Court. When the present petition was heard on 7-10-2005, a query was put to the learned counsel appearing for the petitioners, whether the property in question is mortgaged or not, a statement was made by the advocate on record through Shri Nanavati,

learned senior counsel that the property was not mortgaged. However, it was found from the record that in fact the property has been mortgaged and it was found that a false statement was made by the counsel on behalf of the petitioners and the learned Single Judge found that the above conduct amounts to professional misconduct and the learned Single Judge was of the opinion that the Bar Council of Gujarat is required to take serious view of the matter and accordingly the Registry was directed to refer the matter to the Bar Council of India for appropriate action against Shri TV Shah and Shri Kamlesh J. Vora, learned advocates. However, after the order was signed, both the learned advocates filed affidavits tendering unconditional apology which was accepted by the learned Single Judge and the direction contained in the above order dated 7-10-2005 was recalled and cancelled. That thereafter, the present Special Civil Application came to be heard by this Court time and again and it was pointed out that the aforesaid mis-statement have been made on behalf of the petitioners in the memo of the petition, supporting annexures and there is a suppression of material fact as stated hereinabove. An affidavit is filed by

the petitioner No.2 pointing out that she does not know anything about the mis-statement and has submitted that whatever is done is done by her counsel Shri TV Shah and she has put her signature as per the instruction of the advocate and she has also tendered unconditional apology and separate affidavit is filed by the petitioner No.2. Now in the above background, the present Special Civil Application is required to be decided.

7. Heard the learned advocate appearing on behalf of the parties.

8. At the outset, it is required to be noted that in the present Special Civil Application, the petitioner has prayed for various reliefs challenging the various orders passed by the Recovery Officer, DRT, orders passed by the DRT and the orders passed by the DRAT at Mumbai and certain other reliefs in one petition creating confusion and asking for multi reliefs in one petition. As stated above, the petitioners have challenged the order passed by the Recovery Officer, DRT, Ahmedabad dated 29-10-2004 passed below Exh-D/157 and the order passed by the

Recovery Officer passed in recovery proceedings No.918. Petitioners have also challenged the common judfgment and order passed by the DRT dated 25-1-2005 passed in Appeal Nos.74/04 and 78/04 as well as the order passed in Misc. Application No.441/04 in dismissing the application for condonation of delay of 1100 days. Petitioners have also challenged the order passed by the DRAT dated 22-3-2005 passed in Appeal Nos.129/05 and 135/05 (Appeal Nos.48/05 and 62/05) in dismissing the said appeals. Petitioners have also prayed for an appropriate order to quash and set aside the ex parte award passed in Original Application No.165/99 as well as recovery certificate issued thereon. Petitioners have also prayed for other declaratory order as per the contract of settlement dated 4-7-2001 and has also prayed for an appropriate writ, direction and/or order directing the respondent No.1 Bank,-certificate holder to act upon the settlement dated 4-7-2001.

9. That the respondent No.1 Bank approached the DRT by filing Original Application No.165/99 to recover Rs.4,19,32,380.72paisa together with interest at the rate

of 15% per annum from the date of filing of the OA till realisation. Petitioners were served with the summons but they chose not to contest the litigation and even they chose not to file written statement and that thereafter, the ex parte judgment and award came to be passed by the DRT dated 10th September 2001 and it was declared that the respondent No.1 Bank is entitled to recover from the petitioners jointly and severely a sum of Rs.4,19,32,380.72paisa with costs and further interest at the rate of 15% per annum from the date of application till realisation. That the petitioners were also given one month's time to settle the claim of the applicant Bank, failing which the Bank will proceed to sell the movable and mortgaged immovable properties of the original defendants and adjust the sale proceeds towards the amount due. That thereafter, the movable properties were sold. However, the petitioners' certificate debtor filed application below Exh-D/157 to review and recall all the orders passed in connection with the sale of the land of the factory and the same came to be dismissed by the Recovery Officer by order dated 29-10-2004. It is also required to be noted that the Recovery Officer still passed

an order that if the certificate debtor still wants to retain the movable properties sold on 6-1-07 and wants to settle the matter with the certificate holder Bank, they are directed to deposit Rs.4.51 crore within a period of seven days and may approach the Bank with their compromise proposal. The said order is also under challenge. That the petitioners preferred appeal No.74/04 before the DRT challenging the aforesaid order passed by the Recovery Officer dated 29-11-2004 passed in application below Exh-D/157. Petitioners also preferred appeal No.78/04 challenging the order dated 23-11-04, 29-11-04 and 1-12-04 passed by the Recovery Officer. Petitioners also preferred Misc. Application No.441 of 2004 for condonation of delay of 1100 days caused in filing Civil Misc. Application for modifying the judgment and award passed by in OA No.165/99 decided on 10th September 2001. That by detailed and speaking judgment and order, the DRT dismissed the aforesaid appeals as well as Misc. Application No.441 of 2004. Being aggrieved by the judgment and order passed by the DRT in dismissing Misc. Application No.441/04 in not condoning the delay of 1100 days in filing the application which was made by the

petitioners for quashing and setting aside the judgment and award dated 10th September 2001 passed by the Presiding Officer, DRT in OA No.165/99 and for recalling the award and recovery certificate issued in that OA and for modifying the award as per the settlement arrived at by and between the parties on 4-7-01, the petitioners preferred appeal No.48/05 before the DRAT. Simultaneously, the petitioners also preferred appeal No.62/05 praying that the orders passed by the Recovery Officer of DRT, Ahmedabad in Recovery Proceedings No.918 on 29-10-2004, 23-11-2004, 29-11-2004 and 1-12-2004 and all other proceedings regarding sale of the land of the company be recalled and quashed and the Recovery Officer be directed to determine the dues of the Union of India on the basis of settlement arrived at by and between the parties. Both the aforesaid appeals came to be dismissed by detailed speaking judgment and order passed by the DRAT which is also under challenge. Thus, the petitioners have challenged the ex parte judgment and award passed by the DRT in OA No.165/99, various orders passed by the Recovery Officer and the order passed by the DRT as well as DRAT under that appellate jurisdiction.

It is to be noted and as rightly observed by the DRAT that the petitioners have never challenged the ex parte judgment and award even in Misc. Application No.441 of 2004 and what was prayed by the petitioners herein before the DRT in Misc. Application No.441/04 was for recalling the award and recovery certificate issued in the original application by modifying the award as per the settlement arrived at by and between the parties on 4-7-2001. It is also required to be noted that as stated above, the petitioners have tried to mislead this Court by making false statement and so was before the DRT as well as DRAT. In para 11, the DRAT as observed as under:

> ***"In sort, the inescapable conclusion is that the appellants are cancanterous litigants and have scent regard for truth, honesty and legal procedure as such. Without challenging the main decree and issuance of recovery certificate, an attempt is made to challenge consequential orders. False plea is taken that they were not aware about the ex parte decree being passed against them. They are, however, exposed by the proceedings. All throughout,***

they were aware about everything that was going around. Though, they were served with the summons and appeared in the matter, they chose not to file written statement and to pursue their case, as per Court procedure and in accordance with law."

10. Thus, the conduct of the petitioners all throughout before the DRT, DRAT and before this Court dis-entitles the petitioners any relief in the present Special Civil Application. All throughout, the petitioners have tried to mislead the Court and even made various misstatements, which are referred to hereinabove. The statement on behalf of the petitioners that they were not aware about the ex parte judgment and award passed by the DRT also cannot be accepted as by letter dated 22-9-2001 addressed by the Bank to the petitioners, it was conveyed that the DRT had passed the order allowing the bank's claim of Rs.4.19 crores with interest and that unless the payment was made, recovery proceedings would be initiated. Thus, at least, right from September 2001, the petitioners were aware about the judgment and decree and even various orders passed by the Recovery Officer,

DRT, Ahmedabad. The petitioners have suppressed the vital documents/correspondence and the letters inclusive of the letter dated 22-9-2001. As stated above, the petitioners never challenged the main judgment and award passed by the DRT passed in OA No. 165/99 and challenged the consequential orders passed by the Recovery Officer only with a view to delay the recovery proceedings and the recovery. On going through the judgment and orders passed by the DRT as well as DRAT impugned in the present petition, it cannot be said that the DRT as well as the DRAT have committed any error in dismissing the aforesaid appeals when the main judgment and award has not been challenged.

11. The petitioners submitted Misc. Application No.441/04 to condone the delay of 1100 days in preferring the application for reviewing and recalling the judgment and award passed by the DRT in OA No.165/99 on the basis of the settlement dated 4-7-01 between the petitioners and the Bank i.e. on the basis of the OTS and similar is the relief in the present petition. It is the finding of the fact by the DRAT that there was non-compliance of

the terms and conditions of the letter dated 4-7-01 and therefore, the Bank has rightly proceeded further with the recovery proceedings. Even on going through the various correspondence and the annexures, it appears to this Court also that the petitioners have never complied with the terms and conditions of the letter dated 4-7-01 and right from the very beginning, the Bank has disputed and has insisted for proceeded further with the recovery proceeding. By letter dated 17-7-01, the petitioners addressed a letter to the Bank not accepting the amount of settlement or even the period for which the payment was to be made. By letter dated 22-9-01 addressed by the Bank to the petitioners, the Bank conveyed that DRT has passed an order allowing the Bank's claim of Rs.4.19 crores with interest and that unless payment was made, recovery proceedings would be initiated. By another letter dated 22-10-2001, addressed by the Bank to the petitioners, it was conveyed that unless the quarterly installments are paid, the benefit of the approval of settlement would be lost and the Bank would be entitled to recover full dues with interests. Even considering the various correspondence produced along with the affidavit-

in-surrejoinder, it appears that the petitioners never acted as per the letter dated 4-7-01 and has disputed the amount as well as installment. Thus, the petitioners are not entitled to any relief as prayed for on the basis of the letter/settlement dated 4-7-01. As stated above, from the very beginning, the Bank has informed the petitioners that they will proceed further with the recovery proceedings. Thus, when the terms and conditions of the settlement, which were “without even prejudice” are not complied with, the petitioners are not entitled to any declaration and/or relief on the basis of the said letter/ settlement dated 4-7-01 and accordingly, the DRT as well as the DRAT have rightly dismissed the appeals and have rightly refused to give any relief on the basis of the letter/settlement dated 4-7-01. No illegality has been committed by the DRT and/or DRAT in dismissing the appeals as well as not granting any relief on the basis of the letter/settlement dated 4-7-01, which calls for interference by this Court in exercise of powers under Article 227 of the Constitution of India.

12. As stated above, the petitioners have all throughout

tried to mislead and/or made misstatement before the DRT as well as DRAT. Not only that but the petitioners have also mislead this Court and have made various misstatements/ false statement even before this Court which are referred to herein above, various letters have been withheld and they are not produced which are very relevant. If they would have been produced, the real truth would have come out. Even certain documents are produced which are forged one. The over all conduct of the petitioners and/or their advocate Shri TV Shah is such that they have scant regard for truth. An affidavit is filed by one of the petitioners pointing out that they are not responsible for the false statement made in the petitioner and/or withholding of any documents as they have signed as per the instruction given by their advocate Shri TV Shah. It is required to be noted and as stated above ealrier, the learned Single Judge of this Court (K.S. Jhaveri, J.) referred the matter to the Bar Council against Shri TV Shah and Shri Kamlesh J. Vora. However, they tendered unconditional apology and therefore, the said order was recalled. However, thereafter also the same conduct is continued by the learned advocate Shri TV Shah. Even, the

petitioners cannot be relieved on the ground that they have signed the petition as per the instruction of their advocate as before even signing the petition and affirming the petition, it was their duty to verify the facts and thereafter to affirm the petition. Thus, they also cannot escape from the liability. Under the circumstances, learned advocate Shri TV Shah is hereby warned and in future, if such a conduct is continued then the matter will be sent to the Bar Council of Gujarat for appropriate action and so far as the petitioners are concerned, they are to be saddled with the exemplary costs while dismissing the present petition.

It is to be noted that when initially this Court passed an order directing Shri TV Shah, learned advocate to show cause why the matter should not be referred to the Bar Counsel, Shri YN Oza, learned senior advocate appeared for Shri TV Shah by submitting that he wants to make some submissions and thereafter, the matter was adjourned from time to time. However, Shri Oza thereafter, did not appear and therefore, this Court is constrained to proceed further with the present judgment

and this Court has sufficiently waited for Shri Oza as well as Shri TV Shah. However, as stated above, this Court is not passing any order referring the matter to the Bar Council but is passing the order of only giving warning to Shri TV Shah that if in future, such conduct is repeated, the same will be viewed very seriously and that the matter will be immediately referred to the Bar Council.

14. For the reasons stated above, the petition fails and is dismissed with exemplary costs, which is quantified at Rs.25000/- which the petitioners are directed to deposit with the Registry of this Court within a period of six months from today and on such deposit, the Registry is directed to transmit Rs.15000/- to the Gujarat High Court Legal Aid Committee and Rs.10000/- to the Gujarat State Legal Services Authority. Rule discharged.

(M.R. Shah, J.)

shekhar/-